

**STATE OF ILLINOIS  
BEFORE THE ILLINOIS COMMERCE COMMISSION**

<b>Illinois Commerce Commission</b>	:	
<b>On its Own Motion</b>	:	
	:	<b>ICC Docket No. 10-0398</b>
<b>Audit of Just Energy Illinois Corp</b>	:	
<b>d/b/a Just Energy d/b/a</b>	:	
<b>U.S. Energy Savings Corp.</b>	:	

**JUST ENERGY ILLINOIS CORP.'S  
VERIFIED PETITION FOR INTERLOCUTORY REVIEW  
OF THE ADMINISTRATIVE LAW JUDGE'S FEBRUARY 22, 2012 RULING**

Just Energy Illinois Corp. ("Just Energy"), by its counsel DLA Piper LLP (US), pursuant to Section 200.520 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), respectfully seeks interlocutory review of the Administrative Law Judge's February 22, 2012 Ruling ("ALJ's February 22 Ruling"), which granted the Citizens Utility Board ("CUB") Motion for Protective Order and Access to Unredacted Audit Report ("CUB's Motion"). In support of this Petition, Just Energy states as follows:

**I. INTRODUCTION**

CUB's Motion sought access to the confidential portions of the "Compliance Audit and Management Assessment of the Business and Sales Practices of Just Energy" (the "Audit Report") submitted by NorthStar Consulting Group ("NorthStar") to the Illinois Commerce Commission ("Commission") on January 3, 2012. CUB's Motion suggested that CUB is entitled to access to the confidential portions of the Audit Report because it was involved as a complaining party in ICC Docket No. 08-0175, the proceeding that gave rise to the NorthStar Audit Report.

However, nothing in the Commission's April 13, 2010 Final Order in Docket No. 08-0175 gave CUB rights to any portion of the Audit Report, let alone confidential portions of that

report. CUB's attempt to challenge the Commission's Final Order in Docket No. 08-0175 – including specifically the Commission's treatment of *confidentiality issues* – was unanimously rejected by the Commission.

Although CUB is an intervenor in the instant proceeding, ALJ Gilbert's August 31, 2010 Ruling regarding CUB's intervention specifically noted that “[a] fourth-party oversight role [by CUB] is simply not contemplated by the initiating Order in this docket.” (Aug. 31, 2010 Ruling at 3.) CUB never challenged that ruling. Yet, CUB's Motion provided no basis or explanation to permit such fourth-party oversight at this closing stage of the proceeding. Importantly, as explained in the Compliance Filing that Just Energy submitted on February 14, 2012, Just Energy is agreeing to implement the recommendations set forth in the recommendation section of the Audit Report. Therefore, under the specific terms of the Commission's June 23, 2010 Order Initiating Audit in the instant docket (“Initiating Order”), nothing remains to be litigated or evaluated, and the matter should be closed.

The proposed Order Regarding Protection of Confidential Information (“Proposed Protective Order”) submitted with CUB's Motion confirmed that no legitimate purpose would be served by granting CUB access to the confidential portions of the Audit Report. Paragraph 8 of CUB's Proposed Protective Order would limit the use of Confidential Information to “preparation for and conduct of this proceeding.” At this final stage, however, there is nothing further to prepare for or conduct. The Audit is complete, the Audit Report has been submitted consistent with the terms of the Initiating Order, and Just Energy has agreed to implement the Audit Report's recommendations. That concludes this matter under the plain terms of the Initiating Order. Accordingly, even under the specific terms of CUB's Proposed Protective Order, it is clear that CUB's request is moot, and CUB's Motion should be denied.

Notwithstanding these facts, on February 22, 2012, Administrative Law Judge Sainsot, who is now presiding in this docket, granted CUB's Motion. Just Energy respectfully seeks reversal of the ALJ's February 22 Ruling. That Ruling cited ALJ Gilbert's August 31, 2011 Ruling for the proposition that there would have been no point in permitting CUB to intervene if CUB would not be permitted access to the confidential version of the Audit Report. However, to the extent that CUB seeks to comment upon the public version of the Audit Report, the ALJ has established a process that would allow CUB to submit such comments. (*See* ALJ Ruling dated February 27, 2012, providing that parties may provide comments on Just Energy's Draft Order by April 5, 2012.) Moreover, the rationale in the ALJ's February 22 Ruling fails to account for the fact that ALJ Gilbert's August 31, 2011 Ruling contemplated that Just Energy could have challenged the recommendations in the Audit Report, which was an option specifically provided for in the Initiating Order.

If Just Energy challenged the recommendations in the Audit Report, then CUB may have legitimately required access to confidential information in the Audit Report in order to determine whether a CUB reply to Just Energy's challenge was necessary. However, Just Energy has not challenged the recommendations in the Audit Report and instead has agreed to adopt all of the recommendations in the Audit Report. Given Just Energy's unilateral and unqualified acceptance of the Audit Recommendations, it appears that CUB's only motivation is to needlessly drag this matter out to further its own agenda against Just Energy.

## **II. BACKGROUND**

On April 13, 2010, the Commission entered its Final Order in ICC Docket No. 08-0175, which directed an independent audit of Just Energy's sales program in Illinois. (*See* ICC Docket No. 08-0175, April 13, 2010 Order at 49.) Although CUB was a party to that proceeding, the

Final Order contained language regarding the treatment of the Audit Report that specifically excluded CUB with respect to access to the Audit Report:

Audit results will be submitted to the Commission, Staff, and USESC [now known as Just Energy] no later than eight months after the Commencement Date.

(*Id.* at 50.) CUB sought rehearing of that Final Order, and included in its Application for Rehearing a request for a modification to the Final Order's treatment of access to confidential information. (ICC Docket No. 08-0175, CUB/AARP May 14, 2010 Application for Rehearing at 13.) The Commission voted unanimously to deny CUB's entire Application for Rehearing on June 2, 2010.

On June 23, 2010, the Commission issued its Initiating Order in the instant proceeding. Again, that Initiating Order said nothing about permitting CUB access to the Audit Report, let alone confidential portions of the Audit Report. The Initiating Order set forth a procedure for the filing of the Audit Report. (*See* Initiating Order at 3.) The Initiating Order then stated:

Unless Respondent [i.e., Just Energy] voluntarily agrees to implement the Audit's recommendations, a new docket shall be promptly opened to review the Audit's recommendations, Respondent's responses to those recommendations, and to enter an appropriate implementation Order.

(*Id.*)

On June 28, 2010, CUB sought to intervene in the instant proceeding. Neither CUB's Petition to Intervene nor CUB's July 13, 2010 Response to Just Energy's Opposition to CUB's Petition to Intervene said anything about a need for CUB access to the Audit Report, let alone the confidential portions of the Audit Report. ALJ Gilbert's August 31, 2010 Ruling regarding CUB's intervention request carefully evaluated the purpose of the Audit, and emphasized its limited scope and focus on reducing complaints, rather than turning the audit process into any attempt "to trawl for or remediate past violations." (Aug. 31, 2010 Ruling at 4.) That Ruling

emphasized that “[a] fourth-party oversight role [by CUB] is simply not contemplated by the initiating Order in this docket.” (*Id.* at 3.) ALJ Gilbert also recognized the possibility of a subsequent proceeding that would ensue *if* Just Energy challenged the Audit Report’s recommendations (pursuant to the Initiating Order language quoted above). According to the ALJ’s Ruling, in that instance:

[N]othing in the Initiating Order would preclude an intervenor **in the new docket** from questioning *either* the conduct or substantive conclusions of the audit **during that review**.

(*Id.* at 4.) (Italics in original. Additional emphasis added.) Thus, ALJ Gilbert understood that in a **subsequent** proceeding, CUB could challenge the Audit Report -- but CUB in this proceeding should not be allowed to provide “fourth party oversight”. (*Id.* at 3-4.)

As noted above, according to the Initiating Order, after the filing of the Audit Report, Just Energy was to state whether it agreed to implement the Audit Report’s recommendations. (*See* Initiating Order at 3.) On February 14, 2012, Just Energy made a Compliance Filing stating that it agreed to implement the Audit Report’s recommendations as set forth in the second column of Exhibit II-3 of the Audit Report, which is the recommendations section of the Audit Report. On the same day, Just Energy also submitted a Draft Proposed Order recognizing that, consistent with the process set forth in the Initiating Order, the fact that Just Energy had agreed to implement the Audit Report’s recommendations brought this matter to a close.

On February 21, 2012, CUB submitted a Reply in further support of CUB’s Motion. On February 22, 2012, Administrative Law Judge Sainsot granted CUB’s Motion. That Ruling did not appear to acknowledge or give credit to the fact that at the conclusion of the Audit, one track that this proceeding could take would be for Just Energy to agree to implement the Audit Report’s recommendations, and only if Just Energy did not agree to do so would there be further

litigation. Rather, the ALJ's February 22 Ruling simply found that there would have been no point in permitting CUB to intervene if CUB could not have access to the confidential portions of the Audit Report. For the reasons stated herein, Just Energy respectfully disagrees with that Ruling, and requests that the Commission reverse it.

### **III. ARGUMENT**

CUB's Motion should have been denied. The Commission's Final Order in the underlying proceeding provided CUB no specific rights to the Audit Report, let alone the confidential portions of that report, and CUB's request for rehearing on that point was denied. Similarly, nothing that has occurred in the instant proceeding indicates that CUB should have access to confidential portions of the Audit Report. On the contrary, ALJ Gilbert's Ruling regarding CUB's intervention contained strong cautionary language about CUB's limited role in this proceeding, which role was limited to further participation if, but only if, Just Energy contested the Audit Report's recommendations. Moreover, CUB's own Proposed Protective Order is premised on accessing confidential information solely for use in this proceeding; particularly since this proceeding is about to close, there is no legitimate use that CUB could make of the confidential information.

#### **A. CUB Has No Right To Confidential Information Under the Final Order In Docket No. 08-0175**

Although CUB initiated the proceeding as a complainant in ICC Docket No. 08-0175, the Commission specifically did not afford CUB a right to access to the Audit Report, let alone confidential portions of the Audit Report. On the contrary, the Commission's Final Order in Docket No. 08-0175 carefully defined the parties to receive the Audit Report as the Commission itself, the Commission's Staff, and Just Energy. (*See* ICC Docket No. 08-0175, April 13, 2010 Order at 50.) CUB's request for rehearing of that Order on the issue of confidential treatment of

information was rejected unanimously by the Commission. (*See* ICC Docket No. 08-0175, June 2, 2010 Voting Record.)

The only reason specifically advanced by CUB for CUB to have access to the confidential portions of the Audit Report is stated at paragraph 7 of CUB's Motion, as follows:

As the Complainant which initiated the docket in which the audit was ordered, and requested the audit be conducted, CUB believes it is entirely appropriate and reasonable that it have access to the unredacted Audit Report.

(CUB Motion at 3-4, ¶ 7.) CUB's sentiment about the appropriateness and reasonableness of its access to confidential information is unpersuasive. CUB's Motion (and its February 21, 2012 Reply in support of its Motion) failed to cite any authority to suggest that its status as the complainant in a prior complaint case entitles it to any additional rights – much less unfettered access to the confidential portions of the Audit in this proceeding.

In short, the mere fact that CUB was the complainant in a related case provides no compelling basis for allowing access to confidential portions of the Audit Report, particularly since the recommendations of the Audit Report are not being contested by Just Energy.

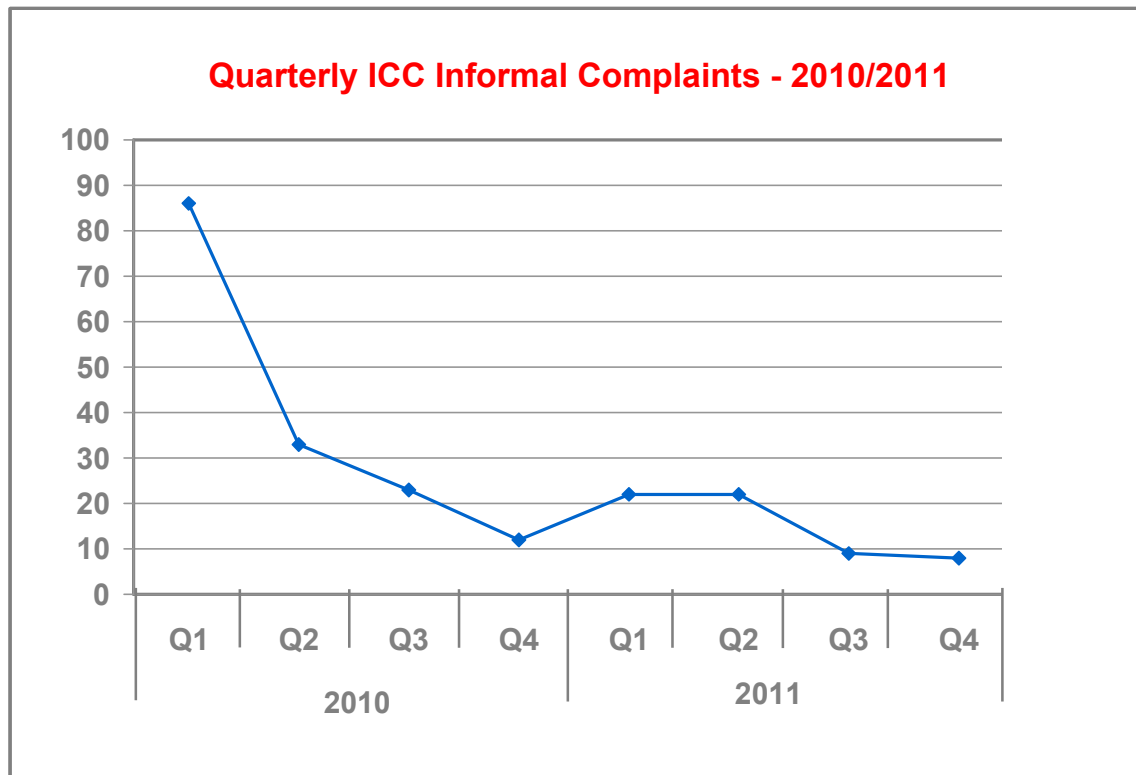
**B. CUB Has No Right To Confidential Information Under the Initiating Order Or ALJ Gilbert's August 31, 2010 Order In This Proceeding**

Although CUB intervened in this proceeding, CUB never articulated as a reason for intervention any need to review the Audit Report. On the contrary, both CUB's June 28, 2010 Petition to Intervene and its July 13, 2010 Response to Just Energy's Opposition to CUB's Petition to Intervene were silent on that subject, providing nothing about a need for CUB access to the Audit Report, let alone the confidential portions of the Audit Report. Although CUB's Motion for a Protective Order failed to acknowledge ALJ Gilbert's August 31, 2010 Ruling regarding CUB's intervention request, that Ruling carefully evaluated the purpose of the Audit, and emphasized its limited purpose and focus on reducing complaints filed against Just Energy,

rather than turning the audit process into any attempt “to trawl for or remediate past violations.” (Aug. 31, 2010 Ruling at 4.) Yet, under the circumstances presented – where Just Energy is agreeing to implement the Audit Report’s recommendations – CUB’s request for access to confidential information at this point in the proceeding seems to be aimed solely at trawling for violations, rather than reducing complaints against Just Energy.

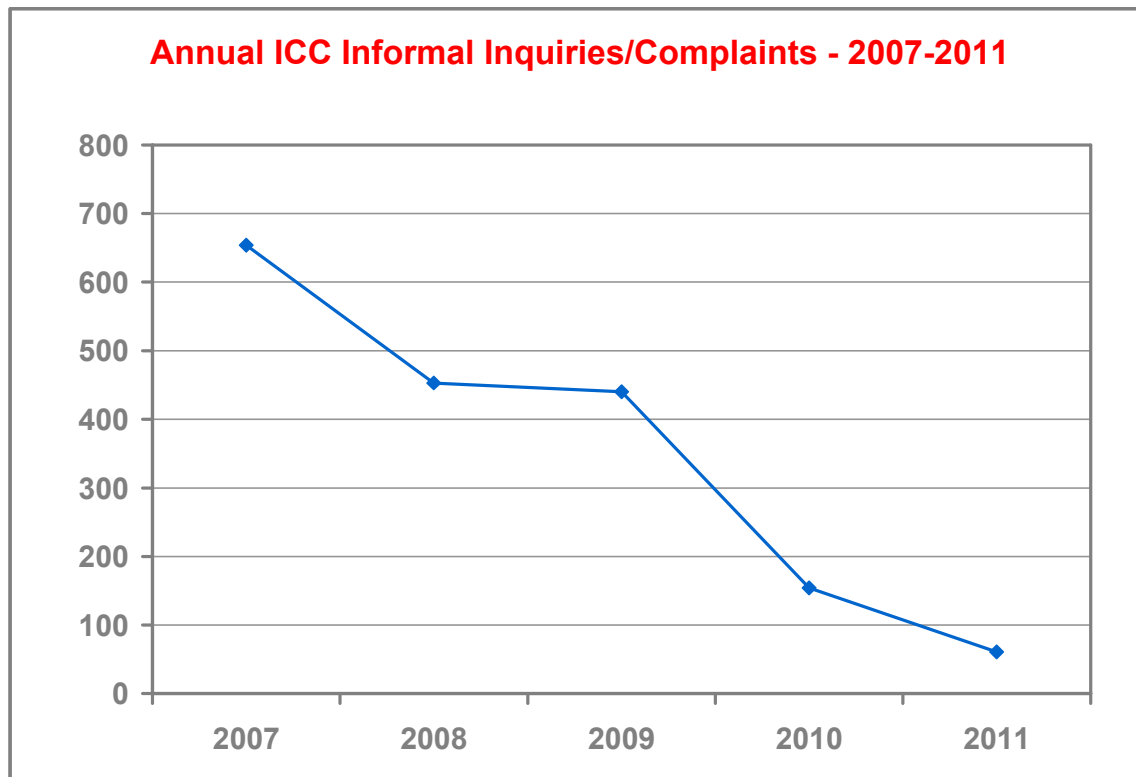
Indeed, the overriding goal of the Commission’s decision to initiate an audit was to “substantially reduce customer complaints.” (Docket No. 10-0398, June 23, 2010 Initiating Order at 2-3; *see also* Docket No. 08-0175 April 13, 2010 Order at 49.) Just Energy has done just that. The quarterly data on the Commission’s website regarding informal customer complaints against Just Energy demonstrate that in 2010 and 2011, the number of complaints against Just Energy dropped precipitously. The chart below summarizes the data in the quarterly reports on the Commission’s website found at <http://www.icc.illinois.gov/ags/consumereducation.aspx#s13>:





There has also been a dramatic year-over-year reduction in informal complaints and inquiries registered with the Commission's Consumer Services Division since 2007. In 2007, the Commission received 654 contacts regarding Just Energy. In 2008, the Commission received 453 inquiries. In 2009, the Commission received 440 inquiries. In 2010, the Commission received 154 inquiries, and, finally, in 2011, the Commission received 61 inquiries regarding Just Energy.<sup>1</sup> The chart below summarizes the annual data:

<sup>1</sup> The annual data for 2007 through 2010 is contained in the Commission's Consumer Services Division Annual Reports found on the Commission's website at <http://www.icc.illinois.gov/reports/Results.aspx?t=7>. The data for 2011 is contained in the quarterly reports posted on the Commission's web site at <http://www.icc.illinois.gov/ags/consumereducation.aspx#s13>.



The reference to 2007 data is relevant because 2007, nearly a half of a decade ago, is roughly the time period covered by the complaint filed in Docket No. 08-0175. This information demonstrates that Just Energy has, in fact, made impressive strides to do just what the Commission required: “substantially reduce customer complaints.” Those results, combined with the fact that Just Energy has agreed to implementation of the Audit Report’s recommendations demonstrates Just Energy’s good faith in this matter. CUB’s attempt to perpetuate this litigation should not be permitted.

ALJ Gilbert emphasized that “[a] fourth-party oversight role [by CUB] is simply not contemplated by the initiating Order in this docket.” (*Id.* at 3.) ALJ Gilbert also emphasized the potential for a subsequent proceeding if Just Energy challenged the Audit Report’s recommendations (pursuant to the Initiating Order language quoted above), and noted that CUB would have the opportunity to be involved in that subsequent proceeding, *if* it occurred. (*Id.* at

4.) However, under the circumstances of the instant case, that subsequent proceeding will not occur. CUB did not appeal ALJ Gilbert's Ruling; thus, it is the law of the case for this proceeding. (*See, e.g., Reich v. Gendreau*, 308 Ill. App. 3d 825, 829 (2d Dist. 1999) ("The law of the case doctrine is based on the rationale that the failure of a party to challenge a legal decision when it has the opportunity to do so renders that decision the law of the case for future stages of the same litigation . . . .")) Accordingly, CUB's attempt to access confidential portions of the Audit Report is inappropriate and unjustified.

**C. As A Result Of Just Energy's Agreement To Implement  
The Audit Report Recommendations, This Matter Is Now Concluded**

The Initiating Order contemplates two courses of action after the issuance of the final Audit Report. On one hand, if Just Energy were to contest the recommendations in the Audit Report, a new proceeding would be initiated, and litigation regarding the Audit Report's recommendations would ensue. (*See* Initiating Order at 3.) On the other hand, if Just Energy "agrees to implement the Audit's recommendations," the new proceeding would not be initiated. As stated above, Just Energy now has made a Compliance Filing indicating that it agrees to implement the recommendations in the Audit Report.

As a result of Just Energy's Compliance Filing, there is nothing else to do pursuant to the Initiating Order's instructions but close this case, as the matter is now concluded. Providing CUB with access to confidential portions of the Audit Report would, therefore, serve no useful purpose.

Just Energy's position here is fully compliant with the Commission's relevant Orders -- and the language of those Orders was not accidental or haphazard. A review of the relevant filings in Docket No. 08-0175 confirms that the Commission's language regarding the process that would ensue after issuance of the Audit Report -- the process that, with limited exceptions,

was basically adopted in whole in the instant proceeding's Initiating Order -- was very intentional and was thoroughly vetted. In fact, in their Briefs on Exceptions to ALJ Gilbert's Proposed Order in Docket 08-0175, both the Commission Staff and CUB discussed and provided specific suggested language modifications to the section of the Proposed Order relating to the audit process, including how the Audit Report would be dealt with after issuance. (*See* ICC Docket No. 08-0175, Jan. 25, 2010 Brief on Exceptions of Staff at 8-10; Jan. 25, 2010 CUB/AARP Brief on Exceptions at 15-16.) The Commission's Final Order made extensive substantive changes to the ALJ's Proposed Order regarding the audit. (*Compare* ICC Docket No. 08-0175 Jan. 11, 2010 Proposed Order at 51-52 *with* April 13, 2010 Final Order at 49-50.) Thus, the process endorsed by the Commission's Final Order in Docket No. 08-0175 and largely adopted by the Initiating Order in this proceeding was not accidental. Just Energy has followed that process by agreeing to implement the Audit Report's recommendations. Now that Just Energy has made its decision based upon the structure previously articulated by the Commission, it would be inappropriate for the Commission to change that structure.

**D. The Specific Language Of CUB's Proposed Protective Order Demonstrates That No Purpose Would Be Served By Permitting CUB Access To Confidential Portions Of The Audit Report**

CUB attached a Proposed Protective Order to the CUB Motion. The Proposed Protective Order, which was approved in the ALJ's February 22 Ruling, provides as follows:

**8. Persons identified above shall use or disclose the Confidential Information only in preparation for and conduct of this proceeding**, and then solely as provided in this Order, and shall take all reasonable precautions to keep the Confidential Information secure in accordance with the purposes and intent of this Order. This includes appropriate precautions to prevent the authorized transfer of information in any type of electronic format. **All Confidential Information produced or exchanged in the course of this proceeding shall be used solely for the purpose of this proceeding** or any appeal arising there from.

(Proposed Protective Order at 6, ¶ 8.) (Emphasis added.) This provision further demonstrates that there would be no purpose served by permitting CUB access to the confidential portions of the Audit Report. Because Just Energy has agreed to implement the Audit Report's recommendations, the instant proceeding is now over. There is simply nothing further to be done other than officially close out this proceeding. Further, to the extent that CUB wishes to comment upon the way in which this proceeding is closed, the ALJ has provided CUB with an opportunity to provide such comments. CUB has not provided any reason why it needs access to confidential portions of the Audit Report to provide such comments.

The process set forth in the Initiating Order now has been complied with, and there is no further substantive activity to occur in this proceeding. Accordingly, because CUB's Proposed Protective Order itself places a restriction on the use of confidential information such that it may be used "solely" for this proceeding, and because this proceeding is now at its conclusion, there is no necessary or legitimate reason to permit CUB access to the confidential portions of the Audit Report. By its own terms, CUB's Motion is moot.

Notwithstanding Just Energy's compliance with the process established by the Initiating Order, CUB seeks to extend this litigation. In essence, CUB seeks to do an end run around the process that the Initiating Order established and with which Just Energy has complied. Just Energy objects to such a tactic.

**E. CUB's Reliance On A Previous Commission Ruling  
In Docket No. 08-0175 Is Misleading And Unpersuasive**

In its February 21, 2012 Reply, CUB emphasized that the Commission, in Docket No. 08-0175, denied a request by Just Energy to designate all audit-related materials as confidential. CUB's Reply then repeatedly suggested that since the Commission did not grant Just Energy's request for full confidentiality of all audit-related materials in Docket No. 08-0175, *any* limited

confidential designations contained in the Audit Report are somehow inappropriate. (*See* CUB Reply at 3-5.) While it does not appear that the ALJ's February 22 Ruling accepted CUB's argument, Just Energy must respond, because CUB's argument is highly misleading and unpersuasive.

At the conclusion of Docket 08-0175, Just Energy sought clarification from the Commission regarding the scope of the audit and the manner in which audit-related information would be treated. In that context, Just Energy made a good faith request that audit-related information should be afforded confidential treatment. (*See* Just Energy's May 26, 2010 Verified Petition for Confidential Treatment.) That Petition was denied by the Commission on June 2, 2010. (*See* Voting Record of June 2, 2010, attached as Attachment A to CUB's February 21, 2012 Reply.) Nothing in that Commission decision suggested that all information and filings would be barred from being afforded confidential treatment, as CUB seems to suggest. CUB is saying, in effect, that because Just Energy sought a ruling from the Commission that all audit-related materials should be kept confidential, and the Commission did not grant that request, all audit related material must be made public -- and that any subsequent suggestion by Just Energy for confidential treatment of the confidential version of the Audit Report would be inappropriate. CUB's argument is illogical and misleading, and should be rejected out of hand.

#### **IV. CONCLUSION**

For the reasons stated, Just Energy respectfully requests that the ALJ's February 22, 2012 Ruling granting CUB's Motion for Protective Order and Access to Unredacted Audit Report be reversed, and that the Commission grants such further relief as it deems just and reasonable.

Respectfully submitted,

**JUST ENERGY ILLINOIS CORP.**

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**VERIFICATION**

Christopher N. Skey, being first duly sworn, on oath deposes and says that he is one of the attorneys for Just Energy Illinois Corp., that he has read the above and foregoing document, knows of the contents thereof, and that the same is true to the best of his knowledge, information and belief.

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Christopher N. Skey

Subscribed and sworn to me  
this \_\_\_\_\_ day of March, 2012.

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